

**M e m o r a n d u m**

580.0030

To: Mr. Bob Lively

Date: March 15, 1977

From: Glenn L. Rigby

Subject: Your letter of February 15, 1977

As I related to you on March 8, I have some reservation about some of the conclusions reached in your letter of February 15 to the editor of \_\_\_\_\_.

In particular, I have difficulty in concluding in a true brokerage situation, i.e., where the third party is merely getting a willing buyer or seller together, and does not have the right to transfer title, that the broker is liable for sales tax on anything other than the mobile home.

From your letter it appears you concluded sales tax is also due on the sale of the awnings, skirting and unattached furnishings. The only basis for this conclusion I can see, is a very broad reading of Section 6275(b), effective 1-1-76.

However, my reading of the section limits its application to brokers' sales of the vehicles. Since we have held the awnings, skirting and unattached furnishings are not regarded as being part of the vehicle, I do not believe we can conclude the broker is liable for sale tax on those items. It appears to me the taxability of these items will turn on the question of whether the owner is a retailer, i.e., the sales could be exempt under Section 6006.5(a).

However, I would like to make one additional comment. This involves whether or not the so-called broker really is merely acting as a good between. I reviewed a couple of the so-called "brokerage" agreements and found they gave the broker the right and power to pass title to the mobile home, as well as the awnings, skirting, etc.

Under these circumstances, I concluded the so-called "broker" was in fact the retailer for all the items transferred. If the "brokers" do have this power and exercise it, then your conclusions as to his sales of all the items being subject to sales tax would be true. (See Regulation 1569.)

This may be one of the reasons why you have not had any feedback from \_\_\_\_\_ or any mobile home brokers.

I will leave it to your decision as to whether or not you wish to make any correction to your letter of February 15. It may be that until there is some discussion of this matter with the industry, we should leave well enough alone.